

From: Ed Welch <EWelch@vesselalliance.com>
To: "secretary@fmc.gov" <secretary@fmc.gov>
Date: Fri, May 30, 2003 4:03 PM
Subject: Comments on Docket 02-15

Dear Mr. VanBrakle - Thank you for our phone conversation yesterday. Attached are the written comments of the passenger Vessel Association (PVA) regarding Docket 02-15. Signed copies on letterhead will be physically delivered to you next week. PVA also looks forward to presenting a statement at the June 11 hearing on this matter. At this point, it is likely that I will be the person speaking on behalf of PVA.

Sincerely,

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May 30, 2003

Mr. Bryant L. VanBrakle
Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Room 1046
Washington, DC 20573-0001



Re: Docket No. 02-15

Please accept these comments from the Passenger Vessel Association in response to your Notice of Proposed Rulemaking on "Passenger Vessel Financial Responsibility" as published in the *Federal Register* of October 31, 2002. The Passenger Vessel Association looks forward to presenting oral testimony at your hearing on June 11.

The Passenger Vessel Association (PVA) is the national voice of U.S.-flag passenger vessels of all types, including overnight cruise vessels. U.S.-flag overnight cruise vessels operate primarily on coastwise routes (in Alaska, on the Columbia, Sacramento, and Mississippi River systems, along the U.S. East and Gulf coasts, and on the Great Lakes). In contrast to larger cruise ships carrying thousands of passengers, U.S.-flag overnight cruise vessels are smaller, most carrying between 50 and 400 passengers. PVA's membership includes seven companies operating 18 passenger vessels subject to the Federal Maritime Commission's financial responsibility requirements.

The Commission Should Seek to Close a Glaring Loophole in the Law

Section 3 of Public Law 89-777 is conspicuously flawed. It fails to provide protection against nonperformance of transportation to thousands of American consumers who embark on certain cruises popular with U.S. citizens. Although the Commission cannot correct the legal deficiencies through this rulemaking, it should bring this problem to the attention of Congress immediately and ask for corrective legislation.

As the Commission admits on its own web site, "Passengers are not covered by the Commission's financial responsibility program if they did not embark from a United States Port."

The statute comes into play with regard to "a vessel having berth or stateroom accommodations for fifty or more passengers and *which is to embark passengers at United States ports.*" Because of the geographic limitation, customers on a vessel that embarks U.S. passengers at a foreign port and then carries them to U.S. waters, points, and destinations does not enjoy the protection of this consumer protection law.

For instance, there exists a booming market for carrying U.S. citizens as passengers to Alaskan waters. Most passengers travel on large foreign-flag vessels, the majority of whom embark their passengers in Vancouver, British Columbia; because of their embarkation port, most foreign-flag operators carrying Americans in Alaska are not subject to the financial responsibility law, even though most of their voyages occur in U.S. waters and nearly all of their passengers are U.S. citizens. In contrast, smaller U.S.-flag operators offer coastwise cruising in Alaska. Because these U.S.-flag operators' vessels embark their passengers from U.S. ports, they are subject to the Commission's financial responsibility requirement.

Removal of the \$15 Million Cap for Unearned Passenger Revenue Will Eliminate Discrimination Against Smaller, U.S.-Flagged Vessels.

The Passenger Vessel Association supports the removal of the \$15 million cap on Unearned Passenger Revenue (UPV), as suggested in the proposed rule.

The explanation of the proposed rule acknowledges that many passenger vessel operators collect UPV many times greater than the \$15 million cap. The cap has the effect of limiting consumer protection and is contrary to Congress' desire to protect all passengers in the event of nonperformance.

The existence of the \$15 million cap creates another unintended consequence. It favors larger, foreign-flagged cruise ships at the expense of smaller, U.S.-flagged passenger vessels.

As described above, U.S.-flag overnight cruise vessels typically carry between 50 and 400 passengers. The \$15 million ceiling means that a smaller operator generally must obtain a bond or surety or create an escrow account in an amount based on all of the operator's unearned passenger revenue. In contrast, a larger operator may have unearned passenger revenue in amounts many times higher than the \$15 million cap.

Since smaller U.S.-flag ships that operate in Alaska and on coastwise routes compete for passengers against their larger counterparts, this \$15 million cap

creates a severe disadvantage. The smaller operator must devote a substantially larger percentage of its revenues to satisfy its consumer protection responsibility, whereas the comparable expense for a larger operator is a relatively lesser financial burden.

Reliance on the Protections Contained in the Fair Credit Billing Act Is Appropriate.

The Passenger Vessel Association supports the proposed rule's provision that relieves passenger vessel operators from providing coverage based on UPR for tickets purchased by credit card within 60 days of embarkation.

The Congressional purpose of section 3 of Public Law 89-777 is to ensure that a passenger is protected financially in the event of nonperformance. An established and effective remedy now exists pursuant to the Fair Credit Billing Act for certain passengers who have paid for their tickets and services by means of a credit card. That remedy did not exist when Congress first enacted Section 3 and when the Commission first promulgated regulations to implement it.

We agree with the Commission that requiring the passenger vessel operator to provide coverage based on all UPR (including revenue from tickets purchased by credit card within 60 days) is "redundant and would impose a needless financial burden." Consumer protection against the possibility of nonperformance of transportation can be best and efficiently achieved by a complementary use of the Fair Credit Billing Act and the financial responsibility provisions of Section 3 of P.L. 89-777.

Alternate Dispute Mechanism

The Passenger Vessel Association continues to review this aspect of the proposed rule and will address this topic in its oral presentation on June 11.

Summary

The Passenger Vessel Association, on behalf of its U.S.-flagged vessel members:

1. urges the Commission to seek legislation to provide financial protection against nonperformance for passengers on all vessels sailing in waters subject to the jurisdiction of the United States, regardless of the port of embarkation of the vessel;
2. supports the elimination of the current \$15 million cap on UPR, to provide protection for all passengers and to provide equitable treatment to smaller passenger vessel operators; and

3. endorses the suggestion that the Commission should take note of the consumer protection features of the Fair Credit Billing Act and therefore modify its definition of UPR, as in the proposed rule.

Thank you for this opportunity to participate in the rulemaking on "Passenger Vessel Financial Responsibility."

Sincerely,

Edmund B. Welch
Legislative Director
Passenger Vessel Association